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No. C 06-04842 SBA
and Related Case:
No. C 07-04446 SBA

ORDER TO SHOW CAUSE
[Docket Nos. 35, 39 & 46]

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1 On June 26, 2007, Elliot filed a complaint against the Board, in case number MC-07-80166
2 (“80166”), which was assigned to Judge Vaughn R. Walker, *see* Docket No. 1-80166. Elliot raised
3 the same allegations he made in this matter. *See id.* On August 28, 2007, 80166 was terminated and
4 redesignated as C-07-04446 (“4446”), which was assigned to Judge Martin J. Jenkins. *see* Docket
5 No. 1-4446, *see* Docket entry for 8/28/2007, in 80166.

6 On October 3, 2007, on the Board’s motion [Docket No. 25], the Court related this matter to
7 cases 4446. *See* Docket No. 28. This same day, the Board filed an Answer in 4446. *See* Docket
8 No. 9-4446.

9 On October 10, 2007, Magistrate Judge Brazil sent notice to the parties setting a settlement
10 conference for January 17, 2008, and a deadline of January 8, 2008 for confidential settlement
11 statements. *See* Docket No. 29. On October 12, 2007, the Court referred 4446 to Magistrate Judge
12 Brazil for settlement. *See* Docket No. 30. On October 26, 2007, Magistrate Judge Brazil sent notice
13 to the parties joining 4446 with the existing settlement conference and statement schedule. *See*
14 Docket No. 32.

15 On December 5, 2007, the Court set hearings on the Board’s two motions for February 26,
16 2008. *See* Docket No. 41. On December 10, 2007, Elliot filed an amended complaint in case 4446.
17 *See* Docket entry for 12/10/2007, in 4446.

18 On January 18, 2008, Magistrate Judge Brazil issued an Order to Show Cause regarding
19 sanctions for Elliot’s failure to appear on January 17 or file any statement. *See* Docket No. 42.
20 Elliot was ordered to file and serve a statement by February 8, 2008, explaining his failure to file a
21 settlement statement or appear at the conference, and to appear on February 15, 2008, before the
22 Magistrate Judge to explain his actions. *Id.* at ¶¶ 1-2.

23 On February 20, 2008, Magistrate Judge Brazil issued a Report and Recommendation
24 Following Show Cause Hearing, recommending the Court dismiss both of Elliot’s matters, as he was
25 failing to prosecute his action, as he had not filed a statement or appeared, in response to the
26 January 18 Order to Show Cause. *See* Docket No. 46.

27 In addition to Elliot’s failure to participate in the settlement proceedings, on November 29,
28 2007, the Board filed a motion to dismiss this matter for lack of standing. *See* Docket No. 35. This

1 same day, the Board filed a motion to consolidate matter 04446 with this matter. *See* Docket No. 39.
2 On December 5, 2007, the Court set hearings on the Board's two motions for February 26, 2008.
3 *See* Docket No. 41. The Court's Order for Pretrial Preparation, filed April 4, 2007, warns the
4 parties, "The failure of the opposing party to file a memorandum of points and authorities in
5 opposition to any motion shall constitute a consent to the granting of the motion." Docket No. 20
6 at 2:11-12. Elliot has not filed oppositions to the Board's two motions.

7 Accordingly, it is ORDERED that:

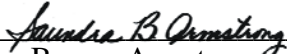
- 8 (1) Plaintiff shall appear in Courtroom 3 of the United States Courthouse, 1301
9 Clay Street, Oakland, California, on **March 13, 2008, at 4:00 p.m.**, to show
10 cause why the above-captioned case and its related case should not be
11 dismissed without prejudice for (1) failure to comply with the Court's order
12 and/or for failure to prosecute; and/or (2) failure to oppose the Board's motion
13 to dismiss [Docket No. 35].
- 14 (2) At least ten days prior to the above hearing, Plaintiff must file a "Certificate
15 of Plaintiff" with the Clerk of the Court, to explain why the case and the
16 related case should or should not be dismissed for (1) failure to comply with
17 the Court's order and/or failure to prosecute; and/or (2) failure to oppose the
18 Board's motion to dismiss [Docket No. 35]. The Certificate shall set forth the
19 nature of the cause, its present status, the reason it has not been brought to
20 trial or otherwise terminated, any basis for opposition to dismissal by any
21 party, and its expected course if not dismissed.
- 22 (3) Please take notice that this Order requires **both** the specified court appearance
23 **and** the filing of the Certificate of Plaintiff. Failure to fully comply with this
24 order will be deemed sufficient grounds to dismiss the action and the related
25 action.
- 26 (4) Any party to this action or the related action, other than plaintiff, may file a
27 statement, as described in paragraph (2), or appear at the hearing set in paragraph (1),
28 to argue why this action and the related action should not be dismissed.

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1 (5) The hearings set for February 26, 2008, at 1:00 p.m., for the Board's Motion to
2 Dismiss For Lack of Standing [Docket No. 35] and Motion to Consolidate Cases
3 [Docket No. 36] are VACATED.

4 IT IS SO ORDERED.

5 February 27, 2008

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7 Sandra Brown Armstrong
8 United States District Judge
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 VANCE S ELLIOTT et al,

5 Plaintiff,

6 v.

7 THE SAN FRANCISCO RENT AND
8 ARBITRATION et al,

9 Defendant.
_____ /

Case Number: CV06-04842 SBA

CERTIFICATE OF SERVICE

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
11 Northern District of California.

12 That on February 28, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
15 in the Clerk's office.

16 Vance S. Elliott
17 The Baldwin House #227
18 74 Sixth Street
19 San Francisco, CA 94103

20 Dated: February 28, 2008

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk